

REMARKS

Claims 10-17 are pending and have been amended in this response. Support for the amendment to claim 10 can be found on page 5, lines 20-26, of the written description. Reconsideration of the application is requested in view of the above amendments and the following remarks.

The Examiner objected to the specification and claims 10-17. Applicants respectfully traverse these objections.

The Examiner rejected claims 10-17 were objected to under 35 U.S.C. § 103(a), as unpatentable over Miskewitz (U.S. Pat. No. 5,629,035) in view of Yang et al. (EP 0,202,819). Applicants respectfully traverse these rejection.

Objections to the Specification

The specification was objected to for failing to include subject headings. Subject headings and priority data have been added to the specification. Applicants respectfully contend this rejection has been rendered moot.

Objections to the Claims

The Examiner objected to claims 10-17 for the use of the phrase "characterized in that." Applicants have substituted the preferred transition "wherein" for the transition "characterized in that." Accordingly, Applicants respectfully contend this rejection has been rendered moot.

The Examiner also objected to claims 10-13, 16, and 17 because the term "micro spheres" should be written as one word rather than two. The claims have been amended to include microspheres as one word, rendering this objection moot.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 10-17 were objected to under 35 U.S.C. § 103(a), as obvious over Miskewitz (U.S. Pat. No. 5,629,035) in view of Yang et al. (EP 0,202,819). Applicants respectfully traverse this rejection.

Claim 10 requires a chewing gum composition comprising a water insoluble abrasive filler substance encapsulated in microspheres of cross-linked alginate. Suitable water insoluble abrasives include silica, calcium carbonate, talc, kaolin and mixtures thereof. Encapsulation of the abrasive provides for longer-lasting teeth-cleaning action and also prevents the organoleptic sensation or earthiness exhibited by non-encapsulated abrasives, such as those taught by Miskewitz. (Page 2, ll. 16-25).

In order for two references to be combined in an obviousness rejection, there must be a source of motivation to modify the teachings of the first reference using the teachings of a second reference. This motivation can only be derived from the nature of the problem to be solved, the teachings of the prior art, or the knowledge of persons having ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998). Even if the references can be combined, the prior art must also suggest the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990).

Miskewitz is directed to a chewing gum containing a flavorant that has been adsorbed on the crystallite surface of an alkali metal bicarbonate matrix. (Col. 3, ll. 15-25). Miskewitz teaches that the bicarbonate may be either sodium or potassium bicarbonate and can be encapsulated in an organic material. (Col. 4, ll. 22-24). Nowhere does Miskewitz teach that a water insoluble component, such as those listed in claim 1, can be used to form the core matrix that is encapsulated in the organic material. Rather, Miskewitz only teaches that an alkali metal bicarbonate can be used to form the matrix for adsorption of flavorant.

Moreover, Miskewitz fails to teach or suggest that the alkali metal carbonate acts as an abrasive. In fact, both sodium bicarbonate and potassium bicarbonate are water soluble, and would quickly dissolve once dispersed into an aqueous environment such as the mouth. As a result, the sodium bicarbonate could not provide the long-lasting teeth-cleaning action afforded by a water insoluble abrasive filler substance, such as those listed in claim 1.

Miskewitz separately teaches that an abrasive can be included in the chewing gum. (Col. 6, ll. 59-67). However, Miskewitz fails to teach, or even suggest, that the optional abrasive material can be encapsulated. Nor does Miskewitz provide any reason to believe that encapsulation of the abrasive would be desirable.

Nor does Yang teach or suggest the encapsulation of a water insoluble abrasive, such as those listed in claim 1. In addition, Yang fails to provide any motivation to encapsulate the optional abrasive material taught by Miskewitz using cross-linked alginate. For these reasons, and others, Applicants respectfully contend Miskewitz in view of Yang fails to render claim 1 obvious.

Claims 11-17 depend from claim 1, an allowable base claim. For this reason, and others, claims 11-17 are also in condition for allowance.

In view of the foregoing, Applicants respectfully request reconsideration of the application in the form of a Notice of Allowance.



Respectfully submitted,

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Date:

May 3, 2004

By:

A handwritten signature in black ink, appearing to read "John J. Gresens". The signature is written over a horizontal line.

John J. Gresens
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JJG/TSW